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SUBJECT: DIILS ASSESSMENT TEAM REPORT LAYS BARE CONGOLESE  
MILITARY JUSTICE NEEDS, PROPOSES FEASIBLE USG ASSISTANCE

REF: A. KINSHASA 129

[1](#)B. KINSHASA 1024

First in a series.

Summary

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[1](#)1. A team from the Defense Institute of International Legal Studies (DIILS) issued a comprehensive assessment of the Congolese military justice sector in September. Drawing on visits during the previous month to facilities in several areas of the country and consultations with a wide range of officials and experts, the team's assessment defines the sector's most critical needs, including personnel, infrastructure, education and material support, and presents recommendations for possible U.S. assistance. The team's readout is bleak: military justice in the Congo needs assistance at all levels. Its institutions are hollowed out and fragile, and require massive levels of support to perform even basic functions. Septel reviews the report's recommendations. End summary.  
Assessment  
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[1](#)2. The Defense Institute for Legal Studies (DIILS) has issued a comprehensive assessment of the Congolese military justice sector and identified areas for targeted U.S. assistance, including personnel, infrastructure, education and material support. The report reflects the conclusions of three American military law experts -- Capt. Jonathan Edwards, USN (ret.), representing DIILS; Col. David Engel, USAF Reserve; and Lt. Col. Amisi "Sam" Mubangu, USA -- who visited the DRC for two weeks in early August, engaging nearly every level of the military justice sector and obtaining unique access to a crumbling system which is nevertheless central to the fight against impunity and the development of real security for the Congolese people. MONUC's Rule of Law Unit (ROLU) provided invaluable assistance to the team, including facilitating meetings, briefings, and in-country travel.

[1](#)3. The team visited prisons, tribunals, and other facilities; met with military prosecutors, military magistrates, civilian defense attorneys, and law professors; consulted with the Attorney General, the Minister of Justice, and the Minister of Defense; and discussed with experts from NGO rule of law groups. Their readout, while expected, was bleak. It confirmed what military magistrates have long told

us: the system needs significant assistance at every level, and material support "from bricks to paper" (ref A). (Note: DIILS has provided copies of the report to the Embassy and the Department. End note.)

#### Personnel

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¶4. The team observed major staffing deficits at every level, from court reporters to judicial police to military judges and prosecutors. One result: cases can languish for years, and often come to trial under-documented and under-investigated. High-profile cases, such as the murder of Serge Maheshe, a reporter for MONUC's Radio Okapi, are often pushed ahead of others, although swift attention is no guarantee of "justice" (ref B). Lower-profile cases often receive only cursory treatment. At one rape trial the team witnessed, testimony literally devolved into a "he said, she said" contest. The case was several years old. Neither prosecution nor defense presented any forensic evidence, and there was little sign of any investigation having taken place.

¶5. Lack of military magistrates also affects the composition of courts and quality of judgments. Panels of judges often include civil magistrates or members with no legal background. At the lowest courts, the required panel of five judges is made up of two magistrates and three "assistant" judges, who often lack any legal training at all. By law, an appeal can only be heard by a panel of five judges including three magistrates; in fact, these panels often include only a single military magistrate. The participation of civil magistrates is not necessarily negative, as their experience in similar cases (e.g. rape, robbery, assault, murder) can

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help standardize military judgments.

¶6. Staffing issues are further exacerbated by looming retirement and lack of discipline. A large number of magistrates are potentially eligible to "retire," should "retirement" become a feasible option in the future. In addition, magistrates may often simply refuse an appointment to a court in the country's interior, where adequate schools, medical care, or housing are often lacking. Military authorities rarely take disciplinary action in such cases.

#### Infrastructure

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¶7. Facilities and infrastructure observed by the team varied from province to province, but the overall condition was dismal. At one extreme is Bunia, the capital of Orientale Province's Ituri District. There, the military tribunal, as well as magistrates' offices, are housed in buildings less than three years old. Offices have electricity, plumbing, and even sport laptop computers with Internet connections. The "cachot," or holding cell, is new and includes windows and space for air circulation, although its plumbing is still rudimentary, and does not include toilets or running water. In Kinshasa, the offices of the Auditorat General (the chief military prosecutor and his staff) occupy both a semi-renovated building and a half-completed new building. The Chief Prosecutor told us that one donor had begun the new building but had left when funding ran out. Even so, the mostly-finished offices have electricity, windows, and air conditioning. This compound, too, boasts computers, printers, and reasonable equipment.

¶8. The offices of the Auditorat in Mbandaka, the capital of Equateur Province, illustrate the other end of the spectrum. The buildings are circa 1960, and neither time, the tropics, nor war have been kind to them. The offices have doors, but there is little equipment and only intermittent electricity. Mbandaka lies in the rain forest on the equator, and when it rains (and it rains often), staff has to move to furniture

and files around to prevent water damage from holes in the roof. There are no computers; manual typewriters would be an improvement, since many of the complaints, rulings, and documentation are written out longhand. The courtroom itself has a desk for the chief magistrate, but no seats or furniture for accused, witnesses, or accusers.

¶9. The DRC has three military prisons, but none is currently in use. Prisons housing military as well as civilian prisoners can best be described as completely inadequate. Many lack the most basic requirements, including beds; in some prisons, NGOs have provided pieces of foam as mattresses, but these are the minority. Mosquito netting is available only if a family provides it. In many prisons, prisoners eat only if a friend or family member provides food, and a portion is usually expropriated by guards. Overcrowding is endemic. Makala Prison in Kinshasa is the best-maintained in the country. However, it houses over 4,000 detainees (including around 1,800 military prisoners) in a facility designed for 1,500. In others, infrastructure is literally crumbling, and breakouts are frequent and sometimes spectacular. For example, recently in Uvira, South Kivu approximately 140 prisoners broke out after complaining that they hadn't eaten in days; the guards were reportedly too weak from lack of food themselves to stop the escape.

#### Education

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¶10. Law professors, constitutional professors, defense counsel, and magistrates themselves consistently pointed out to the team the continuing need for training and education at all levels of military justice. Magistrates are generally hired after completing a bachelor's-equivalent law degree, and much of the training that follows is on-the-job. Military magistrates we met at locations outside Kinshasa, as well as the Minister of Defense, ranked continued legal education as one of the highest priorities for improving operational capacity. (Note: This is consistent with previous field visits by Poloff (ref A) and with the experience of MONUC's ROLU. End note.)

¶11. Only in Kinshasa, where facilities are relatively

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high-end, and where the elite of the magistrature have a comfortable living, was there any indication that training might not be a priority. In fact, two generals -- the First President of the High Military Court, and the Auditor General (chief military prosecutor) -- gave us a list that ranked new offices, new buildings and new courtrooms, along with a new military justice legal training facility, at the top, and seminars and courses for specialized legal training at the bottom.

¶12. In fact, training is needed not only for magistrates, but at other levels as well: for court clerks/reporter, for courtroom bailiffs, for judicial police, and for guards of military prisoners. Judicial police, for example, have the equivalent of three years' academic training; they have no specialized training in interrogation, investigative techniques, or forensics. At the height of the Mobutu era, applicants for the judicial police had to complete a two-year technical training program at the National Police School. Since the school closed around 1990, most judicial police receive only the training they get on the job. Moreover, the most experienced are poised to retire and leave the system. The situation is similar for clerks and bailiffs.

#### Material Support

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¶13. The court system lacks the most basic materials. While the system could clearly use an enormous infusion of supplies, ranging from vehicles and fuel to computers and generators, there are also significant needs that would be

almost invisible to a comparable American court. Manual typewriters would be an upgrade for many of the tribunals and courts in the interior. Necessary supplies such as paper, pens, file folders, and general office supplies are rare in the provinces. But the most telling lack is the absence of updated legal texts, legal reference books, copies of Congolese law and decisions offering guidance for widely-dispersed practitioners who have no access to law libraries or even regular professional contacts.

¶14. In a country the size of the United States east of the Mississippi, there are around 300 miles of paved road. Thirty-six garrison-level courts of first instance are required to provide investigatory support and trials, and the districts which they cover can be immense. There are 11 Military Courts, or courts of appeal, one in each provincial capital and one in Kinshasa. The Military High Court, the supreme military court, is also located in Kinshasa. Each of these courts has responsibility for investigating complaints, arresting offenders, and transporting detainees over enormous distances. Most have no vehicles, no gasoline, and no means of transport other than bicycles, canoes, and their feet. The negative impact that this has on investigations, arrests, and transport of prisoners is incalculable. When one member of the DIILS team asked the military prosecutor in Bunia if motorbikes would be useful, he pointed out the incongruity of transporting a prisoner on the back of the bike.

#### Congolese Response to the Assessment Visit

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¶15. Congolese response to the DIILS team's visit was overwhelmingly positive. In almost every case, military justice officials gave frank and forthright self-evaluations of the system and their perceived needs. Experts from outside the government were helpful and supportive as well. Civilian judicial officials provided thoughtful analyses of the greatest challenges for their military colleagues and proposals for areas in which international assistance would be most useful. With the exception of the most senior magistrates in Kinshasa, nearly every Congolese interlocutor the team met was enthusiastic about their visit and potential partnership with the U.S.

¶16. Minister of Defense Chikez Diemu was particularly effusive. In all three meetings he had with the team, he cited the presence of Col. Engel, who was locked down under fire with a DIILS team in the Foreign Ministry with no food and no water during the March 2007 violence as a clear signal that "the U.S. is with us in this effort." The Minister made a point of including Congolese colleagues -- Col. Mutombo, his legal advisor and General Bivegeti, one of the Vice

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Presidents of the High Military Court, among them -- who had shared the ordeal with Col. Engel and helped ensure that the DIILS team was safely extracted from the building.

Comment  
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¶17. The DRC has many tools in place to support military justice: organic laws, international conventions, the framework of personnel and facilities. However, the institutions of military justice are hollowed out and fragile, and will require massive levels of support to perform even basic functions. In addition, until Parliament approves organic legislation in line with the new constitution to limit military jurisdiction to the army and police, current law will continue to subject certain civilians to military trial, an inconsistency which raises regular complaints by human rights activists. In the DRC, where the "pipeline" is already filled with a plethora of cases under military jurisdiction and the vast majority of human rights violations are perpetrated by soldiers themselves, proper function of the military justice sector is

vital to ensuring long-term peace and security -- regardless of jurisdictional changes in the future. Septel will review the report's recommendations for assistance to this sector.

End comment.

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